NO. 83-305

IN THE
Supreme Court of the United States
OCTOBER TERM 1983

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

V.

ALBERT WALTER TROMBETTA, ET AL.,
Respondents.

On Writ of Certiorari to the California
Court of Appeals, First Appellate District

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICI CURIAE, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION, AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, AND THE LEGAL FOUNDATION OF AMERICA, SUPPORTING REVERSAL

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

National District Attorneys Association, Texas District and County Attorneys Association, The Legal Foundation of America and Americans for Effective Law Enforcement respectfully move for leave to file the attached amicus curiae brief and would respectfully show the Court as follows:

1. *Interest of the Prospective Amici Curiae*:

The National District Attorneys Association, Inc. ("NDAA"), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Its programs of education, training, publications, and amicus curiae activity carry out its guiding purpose, since its founding in 1950, of reforming the criminal justice system for the benefit of all of our citizens.

The Texas District and County Attorneys Association ("TDCAA") is a nonprofit association of more than 1000 elected district and county attorneys and their assistants in Texas. TDCAA performs functions on the state level similar to those performed by NDAA nationally.

Americans for Effective Law Enforcement, Inc. ("AELE") is a national not-for-profit citizens organization which is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions. AELE has previously appeared as amicus curiae fifty-six times in this honorable Supreme Court and thirty-three times in other courts, including federal district courts and courts of appeals and the courts of the several states.

The Legal Foundation of America ("LFA") is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as amicus curiae in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys.

2. *Desirability of an Amicus Curiae Brief*: The potential impact of this case upon the criminal justice system is enormous. The principle at issue has been applied in the courts of California not merely to testing in drunk driving cases, but to evidence of every description. It has resulted in the suppression of evidence because of non-preservation of items that a reasonable officer could not have anticipated would be required to be preserved. Its application to functionally indistinguishable situations would produce unreasonable results. The administrative burden that would be imposed would itself be significant and would divert police officers from traditional functions in preventing crime. Amicus curiae briefing is desirable to show the full impact of the decision below.

3. *Reasons for Believing that Existing Briefs May Not Present All Issues*: Though California is clearly represented by careful and competent counsel, its brief must necessarily concentrate upon the complex instrument at issue (the intoxilizer) and upon prior decisional law. The controlling issues, however, are

general in application, and the decision of the court below presents an extraordinary case of first impression in this honorable Supreme Court. There is need for other views to show the full impact of the decision of the court below. In particular, these amici's experience with the practical aspects of criminal evidence and police methods for handling it will enable amici to assist the court in developing the issues fully.

4. *Nonduplication*: Amici have attempted to avoid duplication of the briefing of the petitioner State of California. For example, amici believe that counsel for California will thoroughly analyze the prior decisions of this Court relating to disclosure of evidence, and therefore, while we agree with California in this regard, we will not repeat those arguments. Instead, we confine ourselves to the effects of the decision below, and to the policy considerations defining due process in this context.

5. *Consent of Parties, or Requests for Consent*: Amici curiae timely requested consent of the parties. Petitioner California has consented, and its letter expressing consent is lodged with the Court. This motion is filed because the consent of respondents Trombetta et al. was requested but refused. The letter of respondents refusing consent is likewise lodged with the Court.

FOR THESE REASONS, Movants request that they be granted leave to file the attached amicus curiae brief.

Respectfully submitted,

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BRIEF OF AMICI CURIAE, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION, JOINED BY THE LEGAL FOUNDATION OF AMERICA AND AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.

INTEREST OF AMICI CURIAE

Paragraphs 1 and 2 of the Motion preceding this brief are incorporated at this point, as showing the interest of amici curiae.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case made by Petitioner, the People of the State of California.

SUMMARY OF ARGUMENT

Amici will not repeat the case-law arguments made by Petitioner, although we agree with those arguments and wish to express support for them. Instead, we confine ourselves to policy issues concerning the impact of the decision below.

First, this is not only a drunk driving case. It concerns a principle of general application. The California courts have applied this principle to suppress a variety of items. There is no reasonable limit that can be logically inferred from the principle itself, and application to functionally indistinguishable cases would produce patently unreasonable results. In some instances, suppression has resulted when no one would have expected the evidence to prove relevant when it was disposed of. Efforts to place practical limits on such a principle would produce a haphazard, confusing jurisprudence, and there is no good reason for doing so when there is no indication that the evidence is exculpatory and all indications are that it is inculpatory.

Secondly, this principle would force police agencies to prefer less accurate or more intrusive evidence collection methods, in those instances in which a complex and unpredictable duty of preservation would otherwise apply. Third, it would distort the process of investigation and scientific inquiry by injecting adversary considerations at the earliest stages.

Finally, it would mean an explosive growth in administrative duties relating to police property warehouses. The only way that an officer can be sure he has complied with the California decisions is to collect and preserve the entire crime scene in every criminal case. Police property warehouses already hold an astounding volume of property and have great difficulty accounting for it. One of the fundamental issues in this case is whether due process requires the reassignment of large numbers of police officers from traditional functions in crime prevention to duties, instead, as warehousemen.

I. THE DUTY OF COLLECTING EVIDENCE SUGGESTED BY THE CALIFORNIA COURT WOULD LEAD TO HAPHAZARD AND UNPREDICTABLE RESULTS.

A. *The duty created in this case is applicable to all cases and all types of evidence, not merely to drunk driving cases.*

The decision of the court below, like the decision in *People*

v. Hitch, 12 Cal.3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974),[1] is not merely a drunk driving decision. It announces a principle that is purportedly of general application. The prosecution is charged with a duty of collecting and preserving any evidence that *might* be useful to a defendant, even if there is no indication that it is exculpatory (and in fact, even if all indications are that it is inculpatory).

The scope of this principle is breathtaking. "A great deal of litigation has occurred since *Hitch* concerning the application of its doctrine . . . ." The appellate cases are only the tip of the iceberg, with many other issues litigated in trial courts. Johnson, *The Accidental Decision and How It Happens*, 65 CALIF. L. REV. 231, 236 (1977). For example, the *Hitch* approach has been used in the California appellate courts to suppress evidence of a telephone conversation when a tape recording was not preserved, as well as to suppress evidence of contraband when the vial containing it was destroyed (the *vial*, not the contraband, was what was not preserved). *People v. Alfieri*, 95 Cal. App.3d 533, 157 Cal. Rptr. 304 (1979); *People v. Swearingen*, 84 Cal. App.3d 570, 148 Cal. Rptr. 755 (1978).[2]

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1 People v. Hitch concerned the breathalyzer, which bubbles the suspect's breath through an acidic solution. Hitch required preservation of the ampoule containing the test liquid. The present case, which concerns the intoxilyzer, is an application of Hitch. The intoxilyzer analyzes the suspect's breath directly, in gaseous form.

2 In both of these cases, the unavailable evidence was relevant only to motions to suppress a confession or a seized item. In Alfieri, telephone tapes that were routinely erased were claimed by the defense to be circumstantially relevant to defendant's claim that he was denied an attorney. In Swearingen, the search and seizure issue depended upon the plain view doctrine, which in turn depended on the opacity of the missing vial. In both instances, extraordinary diligence would have been required for the police even to foresee that the items might have such relevance. (In Alfieri, the nonpreservation was held harmless error since the principal's conversations were not offered into evidence.)

As one commentator has written, the California Supreme Court issued its "groundbreaking first opinion" in *Hitch* "without being aware of the consequences." Johnson, *The Accidental Decision and How It Happens*, 65 CALIF. L. REV. 231, 234 (1977). Professor Johnson observes that the California justices apparently did not recognize that the *Hitch* decision announced a general principle applicable to any kind of evidence. As Professor Johnson says, [3]

> . . . The court also seemed unaware that its reasoning could have an incalculable effect outside the area of drunk driving prosecutions. The police often dispose of some physical item that conceivably might have lead to evidence useful to the defense had it been preserved for defense inspection and testing. For example, by returning stolen property to the owner, the police deprive the alleged thief of the opportunity to have his own criminalist examine the property for fingerprints that might incriminate someone else . . . . What is disturbing is that the court's opinion showed no awareness of the problems it was creating.

Id. Professor Johnson labels the *Hitch* decision "extreme," "poorly considered," and "mishandled." He concludes: "A major decision of far-reaching practical effect had slipped through the California Supreme Court without the justices giving it more than superficial consideration." Id. at 235-37. This criticism is harsh, but it is not the only harsh commentary of this extraordinary decision. [4]

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3 Professor Johnson avoids arguing whether the result in Hitch is correct. See note 8 infra.

4 Cf. Fernandez, Custom and the Common Law: Judicial Restraint and Lawmaking by the Courts, 11 SW. U. L. REV. 1237 (1979).

B. *Application of this principle to functionally indistinguishable cases produces unreasonable results.*

The logical implications of the principle underlying both *Hitch* and the present case would revolutionize the criminal justice system. If a police officer interviewed a witness, that witness' testimony would be subject to suppression under this principle, unless the officer had tape recorded the interview for later defense analysis. Similarly, an investigator's testimony describing a scene or an event would just as logically be supressed because he could have taken a picture of it. If these applications seem far-fetched, it should be remembered that the California appellate courts have interpreted *Hitch* to require suppression on at least one occasion because a tape recording was not preserved. *People v. Alfieri, supra.*

The duty extends even further, with equal logic. Once the *Hitch* principle is accepted, it is impossible to say why the defendant should not be able to test the tape recorder itself, on the chance, however remote, that the recorder may have distorted the voice stresses of the speakers. A photograph should be inadmissible unless the lens used on the camera is made available for referee inspection. (Camera lenses can, in fact, be used to distort distances, sometimes significantly, and under *Hitch*, the defendant need not show that distortion was probable, but only that the possibility existed.) Even if the principle were confined to items analyzed or collected by scientific apparatus, the inference of any reasonable limit is difficult; radar evidence, for example, is based upon analysis of sound waves reflected from a moving object, and the technology exists to record these impulses with a sophisticated version of a tape recorder. Radar evidence in traffic cases thus presents a situation functionally indistinguishable from the case at bar.

Within the realm of drunk driving cases, there is no reason to limit this duty to chemical evidence alone.[5] If, for example,

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5 Whether the "reference" ampoule—a non-reacted sample of liquid used to calibrate the instrument—is also required to be preserved is

officers were to videotape drunk driving suspects performing field sobriety tests, defendant's counsel should object because the videotape does not show every action of the defendant that day. Did the camera fail to record defendant's earlier act of taking his driver's license from his wallet, or his later telephone call to counsel, or his dexterity in walking from the police car to the station, all of which acts defendant claims were performed in a manner showing sobriety? If the videotape fails to include these potentially exculpatory events, it would be inadmissible under the reasoning of the present decision.

Consideration of the broad range of physical evidence in other crimes also shows how difficult it is to place reasonable limits upon this decision. In a murder case, due process would be violated if investigators failed to secure any one item from the crime scene, because the item might have the fingerprints of an alternate perpetrator.[6] To give one more example, even the remnants of seminal fluid extracted from a rape victim would be squarely within the rule of this case; a laboratory report of the examining physician's findings would be analogous to the intoxilyzer printout that was suppressed here.

C. *Efforts to limit this broad duty on an ad hoc, case-by-case basis would produce confusing and inconsistent decisions.*

Although the ultimate conclusion of the lower courts might be to reject some of these applications, the point is that the outcomes cannot be predicted because the reasons for distinctions are difficult to discern. Thus if limitation of the principle at issue here were left to a process of case-by-case evolution, a most

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an open question. If it is required to be furnished, no logical reason exists for refusing to surrender all physical evidence of the steps used by the manufacturer and all ampoules from the same control number. Cf. Condit & Nicholson, Hitch, Due Process and the Macaulay Paradox, 52 L. A. B. J. 70 (1976).

6 Professor Johnson gives a virtually identical example. See text accompanying note 3 supra.

confusing jurisprudence would result. Efforts to explain such case-by-case results would make search and seizure law appear straightforward by comparison.[7] Officers would begin to see cases dismissed in which they had acted reasonably and in good faith (the present case is an example). They would be charged with knowledge of a field of law filled with leaps of logic and unrelated to their traditional duties. Competent defense counsel would be compelled to move for suppression or dismissal whenever any conceivable argument could be made under this principle. The effect upon the courts would be much like that resulting from the fourth amendment exclusionary rule.

In the present situation, for example, the court below has reached a result precisely opposite that reached earlier in *People v. Miller*, 52 Cal. App.3d 666, 125 Cal. Rptr. 341 (1975). Officers' reliance on the admittance of intoxilyzer results in *Miller* thus leads, here, to suppression of the evidence. This conflict is not surprising, because there is nothing in *Hitch* that says that either *Miller* or the present decision is the correct one. Since the California Supreme Court denied hearing in both cases, the conflict endures, and California's law enforcement agencies cannot know how to deal with a common type of evidence in an important category of crime. If this narrow question of intoxilyzer results is not capable of clearer resolution upon general principles, the solutions to the infinite variety of other evidence collection situations must be distant indeed.[8]

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7 Thus a judge dissenting in People v. Swearingen, supra, argued that Hitch should not be extended to that case because "it would not be in the best interest of criminal justice to extend the scope of the Hitch principle to encompass the issue of the credibility of a law enforcement witness during a hearing on a motion to suppress evidence pursuant to Penal Code section 1538.5".

8 Thus Professor Johnson was overly optimistic when he argued,

> The point here is not that People v. Hitch was necessarily incorrect. It may be desirable to place the police and prosecution under a wideranging duty to preserve potential evidence, and the courts are capable of devising suitable limitations on such a duty to take account of practical necessities . . . .

Such results might be justified if the evidence in question were in fact exculpatory (or even had some discernible probability of exculpation). But to impose these disadvantages on account of evidence that to all appearances is *inculpatory*, on the mere possibility that analysis *might* enable the defendant to turn up something exculpatory, is not a fair reading of the due process clause.

II. THE PRESENT DECISION WOULD FORCE LAW ENFORCEMENT AGENCIES TO PREFER LESS ACCURATE OR LESS DESIRABLE TYPES OF EVIDENCE.

The direct but unintended consequence of the decision below would be to induce police investigators to abandon the intoxilyzer in favor of other means of blood alcohol determination. Such alternate choices would be either more intrusive (such as blood extraction by needle), or less accurate (such as urine testing), or more prone to claims of human manipulation (such as the breathalyzer). If a complex and often unattainable duty of preservation is the price for the use of an efficient, accurate, and nonintrusive method of investigation, there will inevitably be some instances in which this price will force rational investigators to fall back upon methods that they would otherwise regard as inferior.

In the present case, for example, the State of California has concluded that technology for referee analysis of intoxilyzer results does not exist. The court below has nevertheless required such analysis as a condition to the use of the intoxilyzer. A fair-minded, reasonable law enforcement agency can only respond to this dilemma by adopting a different means of analysis, even though it might conclude that the intoxilyzer would otherwise provide the superior method of protecting the defendant's interests as well as the State's.

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65 CALIF. L. REV. at 235. But as evidence of such "practical" limitations, Professor Johnson cites People v. Miller, supra, which the present decision repudiates.

This undesirable consequence would not be confined to drunk driving cases. A serious effort to require recording of radar impulses would force some officers to rely instead upon visual tracking of the suspect. Similarly, the ultimate extension of this due process principle would produce a climate in which officers would be unwilling to interview witnesses who declined to speak before a tape recorder. The likelihood of this effect increases when the generality and unpredictability of the duty is considered.

III. THE SUGGESTED DUTY WOULD DISTORT THE PROCESS OF INVESTIGATION AND SCIENTIFIC INQUIRY.

Extending the adversary process to the earliest stages of criminal investigation may distort the inquiry. A police officer investigating a homicide by an unknown suspect often sees a myriad of widely divergent leads, most of which turn out to be will o' the wisps. The decision of the court below would force an investigator in such a situation to alter his thinking radically, because the prosecution does not have the right to decide for the defense what theories are implausible. Nakell, *Criminal Discovery for the Defense and the Prosecution: The Developing Constitutional Considerations*, 50 N. C. L. REV. 437, 460 (1972). Such an approach would extend the adversary system to unprecedented lengths, would divert a process that should (at least in the initial stages) be an effort to discern truth, and would require the officer to perform both roles in the adversary process—a responsibility he "could not adequately discharge." Nakell, *supra*, 50 N. C. L. REV. at 461.

The effect on the scientist would be more serious. "Conflicts arise between scientist and lawyer because the former attempts to describe evidence as it is, while the latter attempts to describe it in the light most favorable to his cause." Thornton, *The Uses and Abuses of Forensic Science*, 69 ABA J. 288, 292 (1983). Thornton concludes that *People v. Hitch* may make the scientist "unable to give free expression to the scientific method:"

> Consider, for example, *California v. Hitch*, 527 P.2d 361 (1974), in which the California Supreme Court held that breathalyzer ampoules should be retained for possible independent analysis by the defense. From a scientific viewpoint, there was no feasible way to preserve the highly acidic contents of the ampoule once the top had been removed and the analysis for alcohol performed. More important, replicated analysis at a later time would have been meaningless. The decision may have been correct from a legal standpoint, and no scientist would oppose the notion of independent examination, but it was foolish from the standpoint of science. Forensic science is not prepared to withstand this abuse. If conflicts are invariably resolved in favor of the law at the expense of science, it makes the forensic scientist somewhat less of a scientist and removes much of the justification for his being in the courtroom.

Id. at 291, 292.

This result would be particularly unfortunate because the adversary system itself contains safeguards against sloppy or biassed investigation. As one public defender has written,

> But if police use of poor techniques jeopardizes the effectiveness of the screening process, there are checks within the system that will put pressure on the police to reform their methods . . . . If the prosecution loses trials because of inadequate or unfair police investigation, the subsequent conduct of police investigations will begin to change. For example, when I worked at the Hunter's Point Public Defender, our office obtained acquittals in four successive sale-of-narcotics cases. The only evidence presented by the prosecution was the testimony of a single narcotics officer who had allegedly pur-

> chased a few balloons of heroin from the defendants. The defense attorney chided the police and prosecution for choosing to rely solely upon the credibility of a police officer, when the case could have included marked money, an independent corroborating witness, or a "Fargo" device, a concealed transmitter worn by a person that relays a conversation to a hidden receiver. After acquittal in these four trials, the narcotics police in the Hunter's Point area made fewer arrests, but those they did make were replete with corroborating evidence. The innocent were thus better protected, no longer at the mercy of the unsubstantiated word of a single policeman.

Mitchell, *The Ethics of the Criminal Defense Attorney—New Answers to Old Questions*, 32 STANFORD L. REV. 293, 306 (1980).[9] Thus if collection of a particular type of evidence is truly important to accurate determinations of guilt or innocence, juries will insist upon its collection. Conversely, if this kind of jury argument fails to produce the acquittals that would lead to revision of police methods, that outcome—across a large number of cases—is an indication that the evidence in question is of a type that the reasonable police officer would not have undertaken to collect.[10]

IV. THE BROAD DUTY OF PRESERVATION SUGGESTED BY THE CALIFORNIA COURT WOULD REQUIRE REASSIGNMENT OF

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9 Mitchell also describes acquittals after defense criticism of the failure to preserve fingerprints or the failure to use reliable identification procedures. Id.

10 In addition, California goes to extraordinary lengths to preserve defendant's right to provide his own sample for his own analysis. See Brief of California; see also Petitioner's Reply to Respondents' Opposition to Certiorari at 7-9.

POLICE OFFICERS FROM TRADITIONAL FUNCTIONS TO ADMINISTRATIVE TASKS AS PROPERTY CUSTODIANS.

The California courts require law enforcement agencies to "show . . . that they have established, enforced and attempted in good faith to adhere to rigorous and systematic procedures designed to preserve [the missing evidence] . . . . If the prosecution fails to meet its burden the court shall apply sanctions . . . ." *People v. Hitch, supra*, 12 Cal.3d at 652-53, 117 Cal. Rptr. at 17-18, 527 P.2d at 369-70. This emphasis on "rigorous and systematic procedures" for warehousing property is the essence of *Hitch*. For example, when police lost a vial in which the suspect was alleged to have carried marijuana (the vial, not the marijuana, was what was lost), and the issue whether the vial was translucent became tangentially relevant to defendant's search and seizure motion, suppression was ordered because the police were not able to show that they had devised "systematic, rigorous" procedures even for identifying the vial as relevant, much less for preserving it. *People v. Swearingen*, 84 Ca. App.3d 570, 148 Cal. Rptr. 755 (1978).

The essential question is whether substantial numbers of police officers must be reassigned from traditional duties in crime prevention to duties, instead, as warehousemen.

A metropolitan police department already stores an astounding number and variety of items under current practices. For example, the Houston Police Department Property Warehouse stores an inventory estimated to be on the order of one hundred thousand to one million separate objects.[11] Each such item must be identified, classified, stored, retrieved, and ultimately disposed of. The transactions by which these items are received, transferred, removed, or destroyed number in the scores of thousands annually.

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11 Interview with Lt. G. A. Gilbert and Capt. E. B. Goodrum, officers with supervisory responsibility of Houston Police Property Division, by David Crump, in Houston, Texas, Feb. 10, 1984.

The stored objects range from small items such as jewelry or currency stored in envelopes, to intermediate items such as televisions stored on warehouse racks, to very large items stored upon the warehouse floor.[12] Internal or external theft, preservation of perishable or delicate materials, inadvertent destruction, protection from liability in the event of improper disposition, loss, or misplacement, are all serious problems.[13] In contested matters, particular items tend to be removed and restored multiple times as a result of settings and continuances, and each transfer increases the likelihood of misplacement. Since all transactions must be evidenced by signature, the accounting system must be manually operated; electronic computing equipment, though useful for some purposes, cannot function as the backbone of the storage and retrieval system for this reason. The sheer matter of storage space has forced the Houston Police Property Division to relocate three times in recent years and will soon require a fourth move. Internal paperwork is formidable, since the Property Division sends requests for authority to dispose of property to investigative officers every 90 days. *Cf.* Farber, *The Prosecutor: A Maze of Paper Work Without End*,

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12 A visitor to the large-object part of the Houston Police Department Property Warehouse as of the time of the writing of this brief, for example, would be able to discern a collection of thirty-one allegedly stolen lawn mowers (including several large riding models), all tagged under a single identifying number relating to a case against a defendant accused of receiving stolen property. In a contiguous space, the visitor would see a structural steel door with forced-entry marks, which is a potential exhibit against several citizens charged with operating a gambling house. One section of the floor stores tires listed as stolen (or held as evidence for some other reason); another section is occupied by collections of major appliances allegedly misappropriated from apartments under construction; still another area contains an assortment of large-screen televisions. Thousands of other items in an indescribable variety surround these objects.

13 Certain items, such as items awaiting chemical analysis, ballistics materials, and automobiles are stored elsewhere. In addition, there are dozens of law enforcement agencies, ranging from smaller city police forces to special operations such as the medical examiner's office, in the same county.

New York Times, June 28, 1983, sec. B at 2, col. 1 (reporting dismissal of case because property report not retrieved in time for start of trial).

The imposition of the duty recognized in this case would multiply the number of items to be stored by several times, particularly if, as in *People v. Swearingen, supra*, the duty of preservation extends even to a vial holding the contraband in question, which unexpectedly becomes relevant to credibility issues in a pretrial hearing. Given the difficulty of placing limits on the present decision, the conscientious officer would likely consider that the entire crime scene must be preserved for referee analysis. The diversion of police resources into warehousing tasks that such a principle would imply is itself a reason for concluding that due process does not require such a result when there is no perceptible tendency of the evidence to exculpate.

CONCLUSION

The decision of the District Court of Appeal should be reversed. This honorable Supreme Court should adhere to the requirement that the prosecution must disclose evidence on defense request when it is material and exculpatory. The Court should avoid extending this duty to evidence which is neutral or inculpatory on the possibility, not disclosed by any indication, that defense analysis may produce exculpatory arguments. In particular, the Court should not place upon the prosecution the crushing burden of creating "rigorous" and "systematic" procedures for preserving and retrieving all such items of evidence, a burden that has no logical limit.

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